IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9907 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE A.S.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JAYSHREE JANAKKUMAR VYAS - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

Shri U.I. Vyas for the petitioner
Mrs. Manisha L. Shah, Assistant Government Pleader, for respondent No.1Petitioner
Shri J.M. Barot for Shri H.S. Munshaw for respondent Nos. 2 and 3

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CORAM :HON'BLE MR.JUSTICE A.S.DAVE

Date : 29/06/2005

ORAL JUDGMENT

This writ petition under Article 226 of the Constitution of India challenges order dated 17th November 1995 passed by the respondent No.2-Authority, whereby,

recovery from the salary of the petitioner is ordered on the ground that respondent No.1-State of Gujarat refused to accord sanction to the higher grade-scale granted to the petitioner from the pay-scale of Rs.1400-2600 to Rs.1640-2900. The higher pay-scale was granted to the petitioner by respondent No.2-AUDA vide its resolution No.71 dated 30.12.1986, which was approved by the State Government vide its resolution dated 31st July 1987. The aforesaid impugned order is challenged, inter alia, on the ground of violation of principles of natural justice in as much as no opportunity of hearing was afforded to the petitioner before passing the impugned order. The petitioner has, by way of draft amendment, relied upon the resolution No.71 dated 30.12.1986 of respondent No.2-AUDA and the Gujarat Civil Services (Revision of Pay) Rules, 1991 as amended from time to time and has claimed, that, on the basis of equation of post, the benefit of higher pay-scale granted by respondent No.2 was in accordance with the Rules.

Shri Jayesh Barot, appearing for Shri H.S. Munsha, for respondent No.2-AUDA, has submitted that since no sanction is accorded by the State Government to the proposal of respondent No.2-AUDA for granting the higher pay-scale and the petitioner, while accepting the higher pay-scale, had given an undertaking that he would return the amount, if the approval is not granted and, therefore, the order of recovery passed by respondent No.2-AUDA is just and proper.

Mrs. Manisha L. Shah, learned Assistant Government Pleader, submitted that the order of respondent No.2-AUDA granting higher pay-scale was contrary to the provisions of the Government Resolutions of 1991 and 1994 and, therefore, the order of recovery passed by respondent No.2-AUDA is legal and proper.

I have heard learned counsel for the parties and perused the record.

The order dated 17th November 1995 (Annexure “A”) only recites about the fact that the instructions have been given to the concerned Authority to recover the excess amount of salary paid to the employees of the Urban Development Authorities pursuant to the audit objections and, therefore, before passing the said order, it is evident that neither any action oriented notice was given to the petitioner nor any opportunity of hearing was accorded. In this connection, a useful reference could be made to the decision of the Apex Court in Shyam Babu Verma and others vs. Union of India and others, (1994) 2 Supreme Court Cases 521, and the decision of the Division Bench of this Court dated 4th April 2001 in Letters Patent Appeal No.578 of 2000 in Special Civil Application No.2196 of 1999 [I.C. Patel vs. Gujarat Housing Board and another]. It is well established principle of law that, when the higher pay-

scale was granted to an employee by the employer or the Board, as the case may be, at no fault of such an employee, the order of recovery of excess amount of salary cannot be passed. However, in case of misrepresentation or projecting incorrect facts if an employee has obtained a higher pay-scale, in such an eventuality, the Authority can even recover such excess amount paid due to wrong representation by the employee.

In the present case, as rightly contended by learned counsel for the petitioner, the decision of respondent No.2-AUDA was taken pursuant to the earlier resolution dated 30.12.1986 and the decision as reflected in Government Resolution dated 31.7.1987 relied upon by respondent No.2 in its meeting dated 10.6.1991 and, therefore, subject to the approval of the State Government, the employees were given the higher pay-scale from the pay-scale of Rs.1400-2600 to Rs.1640-2900. Such decision of respondent No.2 cannot be said to be at the behest of or on any wrong representation by the employee and the order impugned is passed as a result of certain audit objections and non-approval of the State Government, respondent No.1 herein. In such circumstances, the order dated 4.4.2001 passed by the Division Bench of this Court in Letters Patent Appeal No.578 of 2000 is squarely applicable in the present case. In the case before the Division Bench case also, on audit objections raised, the decision of the Gujarat Housing Board to grant/upgrade the pay-scale of the appellant from from the pay-scale of Rs.1400-2200 was the subject matter in appeal and the Division Bench held:

"*The difference of amount of salary payable on fixation in the higher grade scale was duly credited in the Provident Fund account. So far as correction of the mistake is concerned, the Board was right in rectifying the mistake by reducing the scale granted to the appellant in the upgraded post from Rs.2200-4000 to Rs.1640-2900. However, recovery of the amount excess paid to the appellant at this point of time amounts to imposing a sort of penalty or punishment. The mistake was committed by the Board, for which the appellant should not be penalized. Recovery of the excess payment made to the appellant for no fault on his part appears to be wholly unjustified."*

In view of the above, the impugned order dated 17.11.1995 for recovery of excess amount paid to the petitioner deserves to be quashed and set aside on the ground that the excess amount paid to the petitioner is not due to any incorrect representation of facts by the petitioner and, therefore, no order of recovery ought to have been passed. However, if any decision is to be taken by the concerned Authority, such Authority is duty bound to follow the procedure of law and, thereafter, the same can be implemented.

In the result, the petition is allowed. The order dated 17thNovember 1995 passed by the respondent No.2-Authority is quashed and set aside. Rule is made absolute

accordingly with no order as to costs.

(Anant S. Dave, J.)

(swamy)